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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of

MAR 12 2001

Promoting Efficient Use of Spectrum
Through Elimination of Barriers to the
Development of Secondary Markets

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WT Docket No. 00-230

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

Robert S. Foosaner
Lawrence R. Krevor
Laura L. Holloway
James B. Goldstein
NEXTEL COMMUNICATIONS, INC.
2001 Edmund Haley Drive
Reston, VA 20191
(703) 433-4000

Laura H. Phillips
Laura S. Roecklein
DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036-6802
(202) 776-2000

Its Attorneys

March 12, 2001

[Handwritten signature]

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SUMMARY

The Commission should not waste a valuable opportunity to further advance competition in the wireless marketplace by limiting its secondary markets policies to a restricted class of carriers and by applying outdated rules and regulations to spectrum leasing transactions. The Commission should act expeditiously to institute a flexible spectrum management strategy that will promote additional competition, spectrum efficiency and advance the public interest.

First and foremost, the Commission should no longer apply the six *Intermountain Microwave de facto* control criteria to spectrum leasing arrangements. As many of the parties have demonstrated, application of these criteria will, in most cases, preclude lease-type arrangements and prevent carriers from putting fallow spectrum to productive use to serve the public. The *Intermountain Microwave* test is not statutorily mandated; the Commission has authority to apply a more flexible and realistic standard for assessing licensee control in the context of spectrum leasing. Nearly all of the comments support spectrum management flexibility and the Commission's authority under the Communications Act to liberalize its control standard. Furthermore, the Commission itself has recognized, in the context of recent spectrum auction proceedings, that it has the power to define broad license terms under the Communications Act.

The *Notice* proposes to allow only those licensees with exclusive spectrum rights to lease their spectrum to third-parties. In light of the established and increasing competition in the wireless market and the ability of licensees to meet licensing and operational obligations, there is simply no reason not to extend the freedom to negotiate secondary market transactions to all holders of mobile wireless spectrum. To do so, the Commission need only to institute an initial

licensing mechanism and frequency interference and coordination policy that would point carriers in the right direction when entering into spectrum leases.

Furthermore, licensees should remain in control of their license and take responsibility for meeting the requirements associated with each particular license. Requiring the licensee to retain the ultimate responsibility for ensuring that lessees comply with the Communications Act and the Commission's rules addresses any fear that permitting spectrum lease arrangements by all wireless licensees will cause interference issues or generally conflict with the technical limitations of a license. Moreover, written contracts that include lessee commitments of cooperation and compliance with Commission rules, would provide further assurance that the requirements of the Commission's Rules and the Communications Act are met.

To avoid unduly restricting the viability of spectrum leasing arrangements, the Commission must strike a reasonable balance of ensuring that its technical and interference rules are met, while providing licensees and lessees with enough leeway to negotiate freely and make the best use of unused spectrum resources. As such, the Commission should not require that lessees adhere to the Commission's eligibility and service rules applicable to the original license. Instead, the Commission should permit lessees to use leased spectrum for the purpose that best meet their business needs. Subjecting lessees to the same eligibility requirements as licensees would unnecessarily limit potential leasing participants and undercut the Commission's stated goal of developing a robust secondary spectrum market.

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REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

Nextel Communications, Inc. (“Nextel”), by its attorneys, hereby submits its reply comments on the Notice of Proposed Rulemaking in the above-captioned proceeding.¹ The comments herein demonstrate strong support for the Federal Communications Commission’s (“Commission”) initiative to facilitate the leasing of unused or underused spectrum and to encourage a robust secondary market for this scarce resource. It is obvious that secondary markets will be able to function more effectively if the Commission eliminates the regulatory barriers it already has identified to spectrum lease arrangements.

I. INTRODUCTION

Virtually every commenter supported the Commission’s initiative to remove regulatory constraints on the growth of secondary spectrum markets. The commenters overwhelmingly agree that replacement of outmoded regulatory policies for wireless licensees will promote additional competition, spectrum efficiency and advance the public interest.

¹ Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Notice of Proposed Rulemaking*, WT Docket 00-230, FCC 00-402, (rel. November 27, 2000) (“Notice”).

The comments also reflect the widespread recognition that continued application of the outdated *Intermountain Microwave* criteria to secondary market transactions will only serve to hamper the emergence of privately and publicly beneficial voluntary leasing arrangements. The *Intermountain Microwave de facto* transfer of control analysis is simply too inflexible to promote commercial arrangements that are perfectly permissible in other radio services regulated by the Commission. The time has come to adopt a more flexible approach to review spectrum use arrangements that provides carriers with sufficient leeway to tailor their agreements to suit their particular business needs. The Communications Act and Commission precedent in other radio services confirm that the Commission has ample authority to modify its commercial mobile radio policies to allow flexible spectrum use arrangements.

In addition to adopting a more flexible policy for reviewing spectrum use arrangements, the Commission should provide *all* mobile service spectrum holders with the opportunity to participate in the secondary spectrum marketplace. As several commenters point out, limiting spectrum leasing opportunities to only those carriers with “exclusive” spectrum assignments will unnecessarily and drastically reduce the ability of a secondary spectrum market to function and flourish. So long as the Commission implements a predictable licensing policy and adequate frequency coordination requirements, with well defined methods for addressing interference issues, there is no reason not to adopt a more flexible approach to spectrum use.

Spectrum leasing is one form of flexible spectrum use that should be permitted and encouraged. To alleviate any concerns over lessee compliance with the Commission rules and policies, the Commission should ensure that the spectrum licensee is responsible for compliance with the technical rules associated with its license. Licensees and lessees should be free to contract without Commission intervention so that they can reach mutually agreeable terms that

suit their spectrum, business and liability protection needs. While the Commission should be notified of leasing arrangements and the parties to any such arrangement ought to be required to have a written contract, there is no need for the Commission to develop standard terms for leasing arrangements.

II. THERE IS NO NEED TO APPLY THE *INTERMOUNTAIN MICROWAVE* CRITERIA TO FRUSTRATE INNOVATIVE SPECTRUM USE ARRANGEMENTS

The *Notice* tentatively concludes that the *Intermountain Microwave* criteria may no longer provide the “appropriate framework for analysis of control under Section 310(d).”² Many commenters, including Nextel, agree.

A. The Vast Majority of Commenters Advocate Elimination of *Intermountain Microwave* as the Test for Determining When an Unauthorized License Transfer Has Occurred.

There is widespread agreement that the rote application of the *Intermountain Microwave* criteria frustrates attempts by interested parties to achieve spectrum leasing arrangements.³ As AT&T Wireless points out, application of the rather strict and outdated *Intermountain Microwave* factors “preclude a valuable use of licenses that advances an important Commission goal.”⁴ Moreover, because the six-factor test is highly fact-specific, a change in *de facto* control of a license can result based solely on a seemingly insignificant change in facts. Application of the first criterion alone, *i.e.*, whether the licensee has unfettered use of all facilities and equipment, would appear to preclude types of lease arrangements that provide a spectrum lessee

² *Notice* at ¶ 75.

³ *See, e.g.*, AT&T Wireless Comments at 12; Sprint Comments at 1; Cook Inlet Comments at 12-13; Winstar Comments at 9; CTIA Comments at 11.

⁴ AT&T Wireless Comments at 12-13.

with the ability to build and operate its own facilities. The other five criteria similarly are not easily adaptable to lease arrangements that contemplate separate operations by the licensee and the spectrum lessee. *Intermountain Microwave* stands as a barrier to more innovative and efficient spectrum use arrangements.

No commenter suggested that the Commission is compelled to continue to apply the *Intermountain Microwave* criteria or that it lacks the legal authority to apply a more flexible standard for assessing licensee control in the context of spectrum leasing. Indeed, the *Intermountain Microwave* criteria are not statutory. As one commenter states, while *Intermountain* was developed in part as an application of Section 310(d) of the Communications Act, “‘none of the Intermountain Microwave factors are statutorily required, nor [is the Commission] required to apply them in all situations.’ This is the case because ‘Congress left the task of defining “control” to the Commission, understanding that it would have to be defined within the context of the particular circumstances involved.’”⁵

Rather than strain the *Intermountain Microwave* test past the breaking point, the Commission instead should articulate a liberalized standard for licensee control. Several comments generally support the Commission’s proposal to hold that a licensee is in control of its spectrum if it: (a) retains full responsibility for compliance with Commission rules; (b) obtains a certification of compliance from each lessee; and (c) retains full authority to take all actions necessary in the event of non-compliance, including suspension or termination of the lessee’s operations.⁶ Nextel generally supports the Commission’s proposal as well as some of the

⁵ CTIA Comments at 11-12 (citing the *Notice* at ¶¶ 74, 71).

⁶ See, e.g., AT&T Wireless Comments at 13; Securicor Wireless Comments at 15, Teligent Comments at 6-7. A number of commenters suggest that the Commission’s proposed new

variations other commenters suggested that further liberalize the control standard under which leasing arrangements will be reviewed.⁷ From Nextel's perspective, the Commission's proposed criteria would ensure that licensees retain control of their authorizations within the meaning of Section 310.

It is telling that the Commission itself has recognized that *Intermountain Microwave* may deter carriers from entering spectrum lease arrangements.⁸ Based on the ample evidence in the record and the Commission's own acknowledgement, a departure from *Intermountain Microwave* is warranted. Because continued application of the test would ultimately preclude a valuable use of underused or unused spectrum — a stated goal of the Commission — a more flexible approach to spectrum management is in the public interest.

standard is too strict and will discourage spectrum leasing arrangements. *See, e.g.*, CTIA Comments at 14; Winstar Comments at 10; Rural Telecommunications Group Comments ("RTG Comments") at 22.

⁷ The Commission is not required to and should not apply the *Intermountain Microwave* in the spectrum leasing context. Indeed, the Commission has adopted different control standards in the past for different services. In the broadcast context, for example, the Commission evaluates control based on: (1) who is in control of the programming; (2) who is in control of personnel; and (3) who is in control of the finances. *See, e.g.* Liability of Benito Rish, Licensee of Radio Station WREM(AM), Monticello, ME for a Forfeiture, *Memorandum Opinion and Order*, 7 FCC Rcd 6036, at ¶ 5 (1992) ("The Commission has long considered responsibility in the areas of programming, personnel, and finances to signal where control is vested."). In this context, the Commission has consistently held that a licensee's participation in a time brokerage, network affiliation, or local marketing agreement does not, in and of itself, constitute an unauthorized transfer of control or a violation of the Act or of any Commission rule or policy. *See, e.g.*, *Siete Grande Television, Inc.*, 11 FCC Rcd 21154 (1996). In the private radio context, the Commission has concluded that a *de facto* transfer of control does not occur when the licensee owns the most significant equipment and has the power to terminate the governing agreement and a third party performs management tasks. *See* Private Radio Bureau Reminds Licensees of Guidelines Concerning Operation of SMR Stations Under Management Contracts, *Public Notice*, (March 3, 1988) (noting that licensees may enter into management arrangements with third parties, however, "[a]t a minimum. . . licensees must retain *bona fide* proprietary interests in, and exercise supervisory control over, their systems.").

⁸ *Notice* at ¶ 73.

B. The Commission Should Specifically Determine that Spectrum Leases Are in the Public Interest.

Permitting wireless licensees the flexibility to lease their rights to use the spectrum to third-parties provides important new spectrum management options for licensees and prospective spectrum lessees. Furthermore, “[e]ncouraging spectrum leasing arrangements would allow wireless providers to put spare capacity to use for the purpose for which it is most needed. This in turn, would help the Commission fulfill its role as spectrum manager and ensure that consumers have access to the most innovative technologies and services available.”⁹

As part of its flexible spectrum leasing policy, the Commission should conclude that spectrum leases should be permissible if the lease: (a) requires the lessee to certify submission to the Commission’s jurisdiction and compliance with all applicable rules; and (b) retains the licensee’s authority to take all actions necessary in the event of non-compliance, including suspension or termination of the lessee’s operations.¹⁰ Creating a “safe-harbor” for commercial arrangements that conform with these specifications would increase certainty regarding the rights and obligations of lessor and lessee and would dramatically decrease the time and resources involved for all the parties to negotiate a leasing arrangement. In addition, Nextel supports the proposal that would allow lease provisions for automatic renewals, purchase options and rights of first refusal.¹¹ These options would provide wireless service providers maximum flexibility to

⁹ AT&T Wireless Comments at 4.

¹⁰ Nextel does not believe that contracts ought to, as a matter of course, be filed with the Commission. At most, the Commission might determine that it should track leasing activity and require some abbreviated notification filing. In no event should the Commission set up a process where it has to approve leases prior to their becoming effective.

¹¹ RTG Comments at 32.

negotiate lease agreements and maximum certainty in building out their systems using leased spectrum.¹²

III. THE COMMISSION HAS LEGAL AUTHORITY TO IMPLEMENT A SPECTRUM LEASING POLICY

The comments unanimously support the Commission's ability to define the nature and scope of a spectrum leasing policy.¹³ As one proponent of spectrum leasing states, the Commission "unquestionably has ample legal authority to liberalize its control standard so that scarce spectrum can be used more efficiently and productively."¹⁴

A. The Communications Act Provides the Commission with Ample Authority to Allow Spectrum Leasing.

Several provisions of the Communications Act support the Commission's authority to adopt a flexible regulatory framework for the secondary spectrum market. As Nextel's initial comments demonstrated, Section 309 of the Communications Act provides the Commission with oversight of the license application process and the authority to prescribe the rules and regulations necessary for licenses subject to competitive bidding as well as other licenses. Section 309 specifically provides the Commission with broad authority to grant or deny license

¹² El Paso Global Networks, a bandwidth trader, recommends that the Commission afford lessees "maximum flexibility to enter into sub-lease or downstream leasing arrangements" and to "recognize that there is a role for intermediaries" in the secondary spectrum market. *See* El Paso Global Networks Comments at 4, 7. While El Paso's proposals to "commoditize" spectrum may warrant further consideration once parties and the Commission develop some operating history with spectrum leasing, they should not be the focus of this proceeding. Rather, the Commission should take the steps it prudently can in this rulemaking proceeding to encourage the opportunity for secondary markets to develop.

¹³ The Rural Cellular Association ("RCA"), was the lone critic of the Commission's proposed spectrum leasing model. RCA, however, does not seem to argue with the Commission's authority to define the parameters of leasing arrangements.

¹⁴ Sprint Comments at 2.

applications based on the sole criteria of whether the public interest would be served.¹⁵

Furthermore, Section 310 grants the Commission the discretion to determine the circumstances that constitute a *de facto* transfer of control.

The Commission has acknowledged its authority to define licensing terms under the Communications Act. For example, the Commission recently adopted a liberalized spectrum licensing regime in the context of the 700 MHz Guard Band proceeding. There, the Commission created a spectrum leasing mechanism, *i.e.*, the Guard Band Manager, which it concluded was consistent with the Commission's broad licensing authority conferred in Sections 301, 303 and 309 of the Communications Act. In adopting this liberalized approach for the 700 MHz Guard Band, the Commission determined that the Band Manager concept "is consistent with the requirement in Section 310(d) of the Communications Act that licensees retain ultimate *de facto* control of their licenses."¹⁶ The Commission should extend these same principles to other licensees, and continue on the road of increasing spectrum flexibility for other mobile wireless services.

B. The Commission Should Not Limit Flexibility to Exclusive Spectrum Assignments.

The *Notice* proposed to allow those licensees with exclusive rights to use licensed spectrum in their service areas to lease all or portions of their licensed spectrum, but noted that leasing might also be an acceptable spectrum management tool in shared spectrum. There is no reason not to allow *all* mobile wireless licensees to have the freedom to negotiate secondary

¹⁵ 47 U.S.C. § 309(a).

¹⁶ Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order*, 15 FCC Rcd 5299, ¶ 46 (2000).

market agreements.¹⁷ Indeed, permitting spectrum leasing on a wide scale basis would open entirely new business opportunities and would increase dramatically the options that carriers could pursue to serve the public in innovative ways.¹⁸ As one commenter suggests, the “Commission should strive to make its leasing rules as generic as possible and not balkanize an initiative intended to promote more efficient use of all radio spectrum.”¹⁹ Furthermore, the Commission should not foreclose leasing of shared spectrum on the assumption that lessees would be unable or unwilling to comply with operational requirements in these bands or would prefer to hold a Commission license. Rather, “[t]hese lessees will simply need to commit to meet those requirements as a condition of their licenses.”²⁰

Contrary to the opinions expressed by several commenters, the Commission should not delay the expansion of secondary market leasing options to shared use spectrum. As Nextel stated in its comments, if the Commission establishes an adequate initial licensing framework and frequency coordination and interference rules, there should be no adverse effect from embracing fully flexible policies. Indeed, no commenter identified problems unique to shared spectrum to justify the exclusion of such spectrum from the scope of the proposed new leasing policy.²¹

¹⁷ See Winstar Comments at 3 (The Commission “should provide *all* licensees the same opportunities to use their licenses.”).

¹⁸ Sprint Comments at 2-3.

¹⁹ RTG Comments at 35.

²⁰ *Id.*

²¹ A perfect example of how spectrum leasing can benefit shared spectrum licensees is the case of public safety spectrum. In such case, licensees could gain important flexibility to lease underused spectrum on a limited basis to commercial users without giving up that portion of their spectrum or having it remain unused. Lease contracts in such situations could be narrowly tailored to limit the use of the spectrum to suit the public safety licensees’ needs.

IV. LICENSEES SHOULD REMAIN ULTIMATELY RESPONSIBLE FOR COMPLIANCE WITH THE TERMS OF THE LICENSE

A. Ultimate Responsibility For Compliance Should Remain with the Licensee.

Based on its experience in acquiring spectrum via private transactions on a secondary market basis, Nextel believes it is most appropriate for licensees to maintain ultimate control over the license, and thus be responsible for the requirements associated with the particular license. AT&T Wireless agrees, suggesting that “many of the Commission’s rules, if applied to lessees, would cause administrative complications, especially when spectrum is leased for short-term purposes, and could very well result in duplicative administrative burdens.”²² Moreover, as another commenter observed, “formulating a spectrum leasing procedure under which the licensee retains responsibility for the lessee’s actions also reduces concerns that the lessee has assumed *de facto* control of the leased facilities, in potential violation of the FCC’s regulations and the Act.”²³ Thus, requiring the licensee to retain the ultimate responsibility for ensuring that the spectrum lessee complies with the Communications Act and the Commission’s rules effectively addresses any concern that spectrum lease arrangements will conflict with the technical parameters of a license.

While certain commenters suggest that the Commission should refrain from dictating the means by which the licensee enforces compliance with the Commission’s rules,²⁴ Nextel nonetheless believes that the licensee should be responsible for ensuring that lessee compliance

²² AT&T Wireless Comments at 9. Cingular agrees that the licensee should bear ultimate responsibility for compliance, but suggests that the Commission clarify that lessee noncompliance will not be a relevant factor at renewal unless the licensee fails to take any corrective action required by a “safe harbor” compliance program. Cingular Comments at 5-6.

²³ Pacific Wireless Comments at 4.

²⁴ See, e.g., AT&T Wireless Comments at 10.

requirements are included in their written lease agreements as well as stipulations that licensees will cooperate with any Commission effort to identify and cure lessee non-compliance. Nextel would prefer that individual lease contracts provide the mechanism for allocating compliance responsibility between the lessee and licensee, as any rule allocating responsibility would inevitably fail to take account of the wide range of potential leasing arrangements. In accordance with the comments filed by several parties, however, the Commission could decide to have the lessee certify to the Commission that it will comply with Commission rules, accept the Commission's jurisdiction and cooperate with any investigation. This will provide the Commission with another vehicle to be used at the Commission's discretion to achieve necessary rule compliance to resolve interference and other matters expeditiously.²⁵

B. Written Contracts that Contain Specific Lessee Obligations Would Facilitate Compliance with the Commission Rules.

As previously stated, Nextel believes that the use of written contracts that include obligations of cooperation and compliance by spectrum lessees would ensure that rule compliance requirements are met.²⁶ Indeed, spectrum leasing agreements can be written to establish that the lessee has knowledge of its obligations to comply with Commission or licensee instructions, and that as a spectrum user, it is obligated to comply with all applicable Commission rules. Such provisions, coupled with negotiated remedial rights that address the particular business arrangements contemplated, would provide licensees with protection in the

²⁵ See Comments of the Blooston Rural Carriers at 6-7; Cook Inlet Comments at 4-5, Securicor Wireless Comments at 10; and Vanu Comments at 11.

²⁶ Nextel Comments at 13.

event of lessee non-compliance.²⁷ Alternatively, lessees can and should negotiate terms that protect their interests in cases of license revocation and other actions that could negatively affect the status of a license. Lessees, for example, may wish to negotiate for the ability to cure a material violation on behalf of a licensee.

Nextel supports the proposals of CTIA and others that the Commission leave the exact terms of spectrum leases to the contracting parties. According to CTIA, for instance, “[s]o long as a clearly identified party is ultimately responsible for compliance with the requirements of the Act and the FCC’s rules, the details of the spectrum lease should be left to the parties.”²⁸ Again, given Nextel’s experience and success in the secondary market as compared to other parties, and the inherent delay entailed in Commission definition of leasing contractual terms, such flexibility would be more beneficial to the parties to a lease agreement.²⁹

V. SERVICE ELIGIBILITY AND CONSTRUCTION RULES SHOULD NOT BE APPLIED TO FRUSTRATE SECONDARY SPECTRUM MARKETS.

Many of the comments recognize that certain Commission rules are of such bedrock importance to all who depend upon reliable access to spectrum, *e.g.*, interference rules to avoid the degradation of the operations of co-channel and adjacent channel licensees, that they must also apply to the operations of spectrum lessees.³⁰ While all parties in a leasing arrangement must abide by the fundamental operating rules of a service, there is no reason the Commission

²⁷ Nextel believes that a Commission rule establishing this presumption might be useful, but not necessary.

²⁸ CTIA Comments at 5. *See also* AT&T Wireless Comments at 10; Teligent Comments at 5.

²⁹ Nextel also supports the position advocated by the Commission and several commenters to leave leasing disputes that are essentially commercial in nature (those other than rule compliance and rule interpretation) to the courts.

³⁰ *See, e.g.*, Pacific Wireless Comments at 4.

should require lessees to comply with all of the eligibility and service rules of the original license. As explained below, adherence to service eligibility and construction/build-out rules would unnecessarily adversely impact the development of leasing arrangements.

A. Application of Licensee Eligibility Requirements to the Lessee Would Undermine the Commission's Goal.

Several parties advocate generally that the Commission should employ a policy that allows lessees to use leased spectrum for whatever purposes meet their current business needs, regardless of whether they meet the eligibility rules for the use of the particular spectrum.³¹ According to AT&T Wireless, for instance, “[s]ubjecting lessees to the same eligibility requirements as licensees – as if the spectrum were sold rather than leased – would discourage potential participants and thus undermine the goal of developing a ‘robust’ secondary market.”³² Others suggest that application of the eligibility restrictions should only apply to prevent parties from developing market power, and in the present wireless marketplace “are not needed to protect anticompetitive activities.”³³ Nextel agrees with these positions and urges the Commission to refrain from imposing an eligibility requirement that will substantially restrict the class of users that can lease underused or unused spectrum resources

³¹ While Nextel generally supports a flexible use policy, it believes that spectrum leases should not be used as a way for entities that received licenses under entrepreneur/small business program to disengage from their responsibilities under the program to be substantially involved in the running of the licensed enterprise to retain the benefits of their special status. *See also* Comments of Securicor Wireless at 12 (noting that “there may be a number of circumstances that, by not applying the service rules to the lessees, entities can use spectrum leasing to circumvent the Commission’s rules.”); RTG Comments at 27 (stating that “secondary market mechanisms should not override those service and eligibility rules that the Commission chooses to retain”).

³² AT&T Wireless Comments at 5.

³³ Winstar Comments at 13.

An example of why the Commission should allow parties to use leased spectrum for the purpose that best serves their need, centers on public safety spectrum. Public safety licensees that are free to and choose to lease spectrum to *commercial users* would generate revenue from such arrangements, while safeguarding their ability to access and use this spectrum for their own public safety purposes in the future and during emergencies.³⁴ This would allow the public safety licensee to retain its valuable resource, while eliminating the inefficiencies associated with underused spectrum.

B. Construction Requirements Should Not Become a Barrier to Spectrum Leasing Arrangements.

Construction benchmarks and any system deconstruction rules should not operate to penalize a licensee that leases spectrum. As Nextel stated previously, a licensee should not be required to continue to build out its system and comply with the coverage requirements, while the lessee constructs and serves the same service area. A “double construction” requirement might well prohibit lessees from deploying their own networks. Consistent with Nextel’s position, several commenters support the Commission’s proposal to allow licensees to rely on the activities of lessees for the purpose of demonstrating compliance with construction or substantial service obligations.³⁵ This would provide licensees with the flexibility to lease spectrum that is not being used while focusing their efforts on building out other parts of their networks.

³⁴ See Nextel Comments at

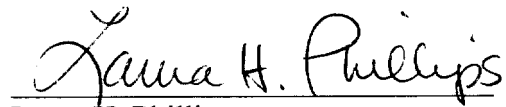
³⁵ See Cingular Wireless Comments at 4; El Paso Global Comments at 10; Direct Wireless Comments at 3; and Cook Inlet Comments at 4.

VI. CONCLUSION

The Commission has a rare opportunity in this proceeding to promote the operation of markets in a way that substantially advances the public welfare. Commenters strongly support the elimination of outmoded policies that frustrate innovative voluntary spectrum use arrangements and the Commission's proposals provide much of the impetus to establish more robust secondary spectrum markets. Nextel urges the Commission to break down artificial barriers, including bringing shared spectrum within the framework of spectrum leasing and clarifying that the policy will not be limited to leasing within a particular service classification.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.



Laura H. Phillips
Laura S. Roecklein

DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036-6802
(202) 776-2000

Robert S. Foosaner
Lawrence R. Krevor
Laura L. Holloway
James B. Goldstein
NEXTEL COMMUNICATIONS, INC.
2001 Edmund Haley Drive
Reston, VA 20191
(703) 433-4000

Its Attorneys

March 12, 2001

CERTIFICATE OF SERVICE

I, Cynthia S. Shaw, a legal secretary at Dow, Lohnes & Albertson, do hereby certify that on this 12th day of March, 2001, copies of the foregoing "Reply Comments of Nextel Communications, Inc." were sent via hand delivery to the following:

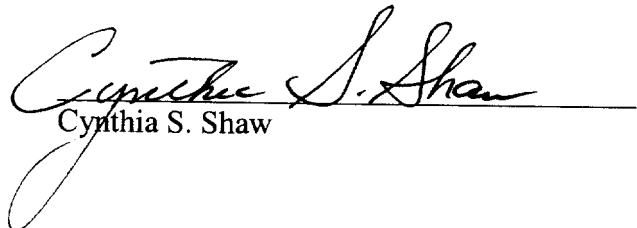
Thomas J. Sugrue
Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 3-C252
Washington, D.C. 20554

James D. Schlichting
Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 3-C254
Washington, D.C. 20554

Paul Murray
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 4B-442
Washington, D.C. 20554

Donald Johnson
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 4A-332
Washington, D.C. 20554

International Transcription Services, Inc.
445 12th Street, SW
Room CY-B402
Washington, D.C. 20554


Cynthia S. Shaw